

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## QUILLON EDWARD CLEMONS

**Plaintiff,**

V.

PAUL PASTOR, MARTHA KARR,  
ERICKA ZIMMERMAN, MARY  
SCOTT, and JUDY SNOW,

#### Defendants.

No. C10-5235 RJB/KLS

## **ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 39), objections to the Report and Recommendation (Dkt. 42), plaintiff's Motion to Subpoena (Dkt. 41), plaintiff's Motion for Summary Judgment (Dkt. 42), and the remaining record, does hereby find and **ORDER**:

- (1) In his objections to the Report and Recommendation (captioned Motion for Summary Judgment), plaintiff cites to a case in which jail officials were allegedly indifferent to a prisoner's serious needs related to HIV; and provides medical records showing plaintiff has a shoulder injury. Dkt. 42. Plaintiff's objections are insufficient to rebut the conclusions of the magistrate judge. The Court adopts the Report and Recommendation (Dkt. 39).
  - (2) Defendants' motion to dismiss (Dkt. 31) is **GRANTED** as to Plaintiff's claims relating to (1) failure to process grievances and (2) food, and these claims are **DISMISSED**.

- (3) Defendants' motion to dismiss (Dkt. 31) is **DENIED** as to Plaintiff's claims relating to (1) medical care; (2) temperature in his cell; (3) sanitary conditions of his cell; (4) excessive noise; and (5) failure to train subordinates. Plaintiff may file an amended complaint to state facts relating to these claims only. In filing an amended complaint, plaintiff is required to show how each defendant personally participated in the alleged violation of his constitutional rights. Plaintiff shall file his amended complaint **on or before January 14, 2011.**
  - (4) Plaintiff should not be permitted to conduct discovery until an acceptable amended complaint has been filed. Therefore, plaintiff's Motion to Subpoena, requesting that the court order the Pierce County Jail to provide medical records to plaintiff at no cost (Dkt. 41) is **DENIED**. Further, any discovery plaintiff wishes to procure from defendants should be made through the discovery rules set forth in Fed.R.Civ.P. 26-37, and should not be made by motion to the court. All discovery in this matter is **STAYED** pending further order of the court.
  - (5) Plaintiff's Motion for Summary Judgment (Dkt. 42) is **DENIED**, as premature and without merit.
  - (6) This matter is **re-referred** to the Honorable Karen L. Strombom, United States Magistrate Judge.
  - (7) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendant and to the Honorable Karen L. Strombom.

**DATED** this 22nd day of December, 2010.

Robert J. Bryan

**ROBERT J. BRYAN**  
United States District Judge